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APPLICATION NO	FILED DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/878,658	06/11/2001	John Albert Hockman	01-015	3104

7590 05/20/2003

Marvin J. Powell  
1 Highland Avenue  
Bethlehem, PA 18017

EXAMINER

DERRINGTON, JAMES H

ART UNIT	PAPER NUMBER
1731	10

DATE MAILED: 05/20/2003

Please find below and/or attached an Office communication concerning this application or proceeding.



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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
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Commissioner of Patents and Trademarks

Art Unit: 1731

Newly submitted (amended) claims 1 and 4-6 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons:

This application contains claims directed to the following patentably distinct species of the claimed invention:

- I) Diopside (silicate materials having the claimed formula where u, v and w are zero – Note original and constructively elected material of claim 3.
- II) Silicate materials having the claimed formula where u, v and w independently range from about 0.1 to about 0.6.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, no claim is generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 1 and 4-6 stand withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

The amendment filed on Feb 28, 2003 canceling all claims drawn to the elected invention and presenting only claims drawn to a non-elected invention is non-responsive (MPEP § 821.03). The remaining claims are not readable on the elected invention because all claims recite the species II listed above and no claim includes the constructively elected material of original claim 3 (species I).

Since the above-mentioned amendment appears to be a *bona fide* attempt to reply, applicant is given a TIME PERIOD of ONE (1) MONTH or THIRTY (30) DAYS, whichever is longer, from the mailing date of this notice within which to supply the omission or correction in order to avoid abandonment. EXTENSIONS OF THIS TIME PERIOD UNDER 37 CFR 1.136(a) ARE AVAILABLE.

Art Unit: 1731

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James Derrington whose telephone number is 703 308-3832. The examiner can normally be reached on 8:30am - 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steven Griffin can be reached on 703 308-1164. The fax phone numbers for the organization where this application or proceeding is assigned are 703 305-7718 for regular communications and 703 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703 308 0661.



JAMES DERRINGTON  
PRIMARY EXAMINER  
ART UNIT 1731

jd  
May 15, 2003